IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

Praveen Kumar Vs. Ram Kumar and Anr.

D.B. CIVIL SPECIAL APPEAL NO.73/06
against the judgment dated 6.1.06
passed in Civil Misc. Appeal No.439/05

Date 19.04.2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. M. Mridul, Senior Advocate assisted by

Mr. R.N. Upadhyay for the appellant.

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BY THE COURT:- (PER HON'BLE RAJESH BALIA, J.)

Having heard learned counsel for the appellant, we are of the opinion that there is no merit in this appeal.

The owner of the vehicle involved in the accident has challenged the award inter alia on the two fold grounds: firstly, that the insurance company has wrongly been absolved from the

liability to indemnify in respect of compensation on the ground that cover note of the policy having been issued on 16th September, 1988 and accident has taken place on 17th September, 1988. The accident has taken place after insurance policy having become effective. However, the insurance company has taken specific stand that the cover note of the policy dated 16.9.1988 was issued ante dated by some collusion inasmuch as the premium for taking policy itself has been received only on 20th August, 1988. The cover note produced in the court by the insurance company was examined and it was also noticed that the original cover note was in the name of Tarun Kumar, which name was amended only on 15.11.1988 after about a year or so of occurrence of accident.

Keeping in view the documents and oral evidence that has been produced by the insurance company, the Motor Accident Claims Tribunal was satisfied that though the cover note was dated 16th Sept., 1988, it was ante dated as the premium in respect of it has been deposited only on 20th Sept., 1988 when the receipt was issued and

therefore, the insurance policy could not have commenced prior to 20th Sept., 1988. Since the accident has taken place prior to the date on 17.9.1988 the insurance company cannot be held liable to indemnify the owner. This finding was affirmed by the learned Single Judge in appeal also.

The learned counsel for the appellant urged before us that since the cover note was issued on 16.9.1988 and the insurance agent to whom the money was paid by the appellant has not been produced, no adverse inference can be drawn against him. We are unable to accept this contention in absence of any evidence led by the appellant. Therefore, the first ground raised by the appellant is not sustainable.

The other contention raised before the learned Single Judge was about quantum of compensation. The learned Single Judge has not found it to be excessive and not liable to be interfered with. We are in agreement with the learned Single Judge.

Therefore, the appeal fails and is hereby dismissed.

[R.P. VYAS], J. **[RAJESH BALIA], J.**

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